

Smt. Prem Lata

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Arhant Kumar

Civil Appeal No. 74 of 1970

(G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

08.03.1972

JUDGMENT

HEGDE, J. -

1. This is a wife's appeal, by special leave against the order directing restitution of conjugal rights. The parties were married on July 15, 1961. Gouna ceremony took place on December 10, 1961. The courts below have come to the conclusion that the appellant deserted the matrimonial home on January 13, 1962. After exchange of certain letters the husband filed the suit from which this appeal arises for restitution of conjugal rights, on November 3, 1965. The wife in the course of her evidence positively stated that she was not willing to return to her husband's house under any circumstance. Hence, the questions that she left the husband's house voluntarily and that she has no idea of returning to the husband's house are no more in dispute. The only contention taken on her behalf was that it was not possible for her to live in her husband's house, because of the ill-treatment she received at the hands of her husband and his parents. Both the trial court as well as the appellate court have come to the conclusion that there is no reliable evidence to show that the appellant was ill-treated in her husband's house. This is essentially a finding of fact. This court ordinarily does not interfere with findings of facts. Even if we want to examine the correctness of the facts found by the trial court as well as the appellate court-the High Court refused to reappreciate the evidence - we are not in a position to do so because all the relevant documents are not before us. For one reason or the other, they have not been printed. In arriving at the conclusion that there is no reliable evidence to show that the husband or his parents had ill-treated the appellant, the trial court as well as the appellate court have relied on a number of letters exchanged between the parties. Some of them have not been printed. In these circumstances, we are unable to accede to the request that we should de novo examine on record.

2. Mr. O. P. Verma, the learned counsel for the appellant, contended that the trial court as well as the appellate court had wrongly placed the burden on the appellant to prove that she had grounds to leave the husband's house and because of that erroneous approach those courts have come to a wrong conclusion. The question of burden of proof has no importance at this stage. Both parties have adduced evidence and the trial court and the appellate court have appreciated that evidence.

3. For the reasons mentioned above we see no reason to interfere with the judgment under appeal. Hence, the appeal is dismissed. There will be no order as to costs. But we do not disturb the orders earlier made by this court directing the husband to pay to the wife a sum of Rs. 2,000/- (in aggregate) for meeting the expenses of this litigation.

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